

REMARKS

Reconsideration and allowance are respectfully requested.

Prior to entry of this amendment, claims 1-11 were pending in the application.

By this amendment, claims 1 and 11 have been amended.

In particular, it is to be noted that no new matter has been added in amending the present set of claims.

Claim Rejections - 35 U.S.C. 112

Original claims 1-11 have been rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.

Examiner states that the claims contain subject matter which was not described in the specification.

In particular, the Examiner considers that the added limitation "defined by a portion of the liquid conduit, by an inner portion of the screw-on cap and by the cylindrical wall" is not disclosed in the specification.

Applicant respectfully traverses such opinion, since the specification discloses such features, on page 6 lines 4-6 and lines 10, 11.

However, claim 1 has been amended substituting the objected expression "defined by a portion of the liquid conduit, by an inner portion of the screw-on cap and by the cylindrical wall" with the exact wording disclosed in the specification.

Please note that this feature is supported also by drawings, in particular by figure 1, 2, 5 and 6.

Therefore now claim 1 recites: "defined by an upper section of the liquid conduit and by the cylindrical walls and the central exhaust orifice of the screw-on cap".

Support is on page 6 lines 4-6, 10 and 11 and from figure 1, 2, 5 and 6 in which is clearly visible that the mixing chamber (33) is delimited also by the cylindrical walls (30). However this is also clearly derivable from the specification on page 6 lines 1-13.

Claim Rejections - 35 U.S.C. 103

Claims 1-10 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Ito (US 4432496) in view of Gross (US 6,513,681).

Applicant respectfully traverses the Examiner's opinion, since Gross is absolutely not combinable with Ito.

First of all, why the skilled man should combine a foam liquid dispensing device with a spray closure with a push-pull seal? Indeed, a device for making foam functions in a different way with respect a device for making spray.

Moreover, even if the skilled man considered Ito and combined it with Gross, how he could provide the device of Ito with a cylindrical wall on the screw cap inserted between the air conduit and the liquid conduit? To do this combination, the skilled man should remove the cap 40 of Ito and should cut or remove the frusto-conical portion 23 of Ito.

Indeed, referring to figure 2 of Ito, the cylindrical wall should be inserted in the mixing chamber 32, which is closed above by the frusto-conical portion 23 of the inner cover 20, except for a discharge port 25, through which clearly a cylindrical wall cannot be inserted! Therefore, in order to insert the cylindrical wall between the liquid conduit and the air conduit, the skilled man should cut the frusto-conical portion 23 and should remove the upwardly tapered bar-shaped plug 24 which closes the jet nozzle 42 when the outer cover 40 is completely screwed onto the inner cover cap 20. But nowhere there is the suggestion of cutting a piece of the inner member 20.

Moreover, to place the cylindrical wall in the mixing chamber 32, the porous element 31 should be removed. But there is no indication that would prompt the skilled man to remove the porous element 31. Indeed, if the porous element is removed, the device of Ito does not function any longer. The porous element allows the creation of the foam.

Where in these documents there is the suggestion to making such modifications? How the skilled man could cut a portion of the device disclosed by Ito? Moreover, if he removed the frusto conical portion 23, the air conduit will no longer be present.

Moreover, neither Ito, nor Gross show all the technical features disclosed in claim 1.

In particular, as already stated in the response to the previous Office communication, Ito does not disclose that the cylindrical wall on the screw cap is inserted between the air conduit and the liquid conduit, to create a mixing chamber having a variable geometry and that the liquid conduit and the air conduit are obtained coaxially in a cylindrical body.

Claim 1 has been amended simply specifying that tip cap is able to be fully inserted inside said central exhaust orifice.

Applicant wants to underline that Ito does not disclose that the liquid conduit has on its second end an arm oriented upwards, bearing, at its free end, a tip cap, able to be fully inserted inside said central exhaust orifice whilst the screw-on cap is screwed onto the cylindrical body, until sealing the nebulizer.

Indeed, in contrast to what stated by the Examiner on page 3 of the Office communication, the arm 24 of Ito does not present a tip cap able to be fully inserted inside the central exhaust orifice of the screw-on cap when the cap is screwed onto the cylindrical body.

In fact, as clearly shown in figure 3, left-hand, the upper edge of the arm 24 abuts against an internal abutment of the cap 40, but it is cannot be inserted inside the nozzle 42.

Also Gross shows a tip cap 48 whose upper surface abuts against the inner surface of the cap 100, closing the central orifice 108.

Therefore, in contrast to what claimed in claim 1, the tip cap 48 of Gross cannot be inserted inside the orifice 108, since it presents a diameter bigger than the orifice 108.

The fact that the tip cap is fully inserted inside the orifice can assure a better hygiene of the orifice and avoids that dust or moisture will accumulate inside the orifice.

The three criteria to establish a *prima facie* case of obviousness are not satisfied, since:

- 1) there are no suggestions or motivations in the references themselves to modify the references or to combine reference teachings;
- 2) there are no reasonable expectation of success in combining the references;
- 3) not all the claim limitations are disclosed in the references.

Therefore, Ito and Gross are not combinable and claim 1 is not obvious, so the present application is patentable.

Claims 2-10 depend upon patentable claim 1 and therefore they are patentable too.

Applicant respectfully wants to underline that Examiner has expressly rejected only claims 1-10. Nothing has been said on claim 11, not complying

with the requirement of CFR 1.113(b) "In making such final rejection, the examiner shall repeat or state all grounds of rejection then considered applicable to the claims in the application, clearly stating the reason in support thereof".

Therefore, Applicant should consider claim 11 allowable.

However, for uniformity with amended claim 1, the same amendments carried out on claim 1 have been made on claim 11 ("tip cap is able to be fully inserted inside said central exhaust orifice" and "mixing chamber, with variable geometry, defined by ~~a portion of the liquid conduit, by an inner portion of the screw-on cap and by the cylindrical wall~~ an upper section of the liquid conduit and by the cylindrical wall and the central exhaust orifice of the screw-on cap).

Therefore, the same argumentation applied on claim 1 can be applied on claim 11.

Moreover, only another little amendment has been carried out on claim 11 to make it clearer.

In particular, it has been specified that the anti-unscrewing tab fastened tangentially to the cylindrical body engages mutually the abutment obtained inferiorly in the screw-on cap when the screw-on cap is unscrewed to the maximum extent, so that the cap cannot be freed from the thread.

Neither Ito, nor Gross show contrast means able to prevent the complete unscrewing of the screw-on cap from the cylindrical body like the one claimed by the present invention. In particular, neither Ito, nor Gross show a tab which interferes with an abutment when the screw-on cap is at its maximum extent.

In view of what above, claim 11 is considered to be new and inventive and therefore it is felt to be patentable.

Conclusion

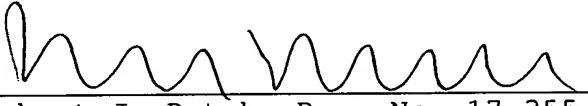
All matters having been addressed above and in view of the pending claims and remarks, Applicant respectfully requests the entry of this Amendment, the Examiner's reconsideration of the application, and the timely allowance of the pending claims.

Applicants' counsel remains ready to assist the Examiner in any way to facilitate and expedite the prosecution of this application.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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